

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

COMMODITY FUTURES TRADING  
COMMISSION,

Plaintiff,

File No. 1:06-CV-166

v.

HON. ROBERT HOLMES BELL

AURIFEX COMMODITIES RESEARCH  
COMPANY, et al.,

Defendants.

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**MEMORANDUM OPINION AND ORDER**

This matter comes before the Court on Defendant Ty Klotz's second amended motion for leave to receive monies for personal expenses. (Docket # 183.) The Court denied Mr. Klotz's first motion without prejudice for failure to document a legitimate source of the funds from "friends." (Docket # 164.) The Court denied Mr. Klotz's second motion without prejudice because Mr. Klotz had not documented his financial arrangement with Ms. Bushur or Ms. Bushur's source of funds with any evidence that would assure the Court that the funds have a source that is independent from the funds received from Aurifex investors. (Docket # 178.)

Now, in support of his third motion, Mr. Klotz has submitted his own affidavit stating that Ms. Bushur is the only source of monies available to him; that since 2006 Ms. Bushur's sole source of income has been her employment as a certified public accountant; that he has

"seen no evidence" that the source of any monies Ms. Bushur has given him are Aurifex funds; and that in the past when Ms. Bushur provided him with funds to pay his attorneys she invaded her 401(k) retirement fund and used money from refinancing her house. (Klotz Aff. ¶¶ 3, 8-10.) According to Mr. Klotz, Ms. Bushur has declined to provide an affidavit as to the source of her income on advice of her attorney. (Klotz Aff. ¶ 11.)

Plaintiff CFTC objects to Mr. Klotz's third request for monies based upon its contention that Mr. Klotz cannot meet his burden of showing that the funds are not traceable to Aurifex investor funds without an affidavit from Ms. Bushur detailing both her sources of income and the funds she has available to provide to Mr. Klotz after paying for the support of herself and her four children.

The Court has previously indicated that the \$1080 monthly budget proposed by Mr. Klotz is modest and reasonable. The Court is not unsympathetic to the difficulty Mr. Klotz faces in trying to obtain a sworn statement from a non-party with the degree of financial detail sought by the CFTC. On the other hand, the Court must do what it can to preserve Aurifex assets for the Aurifex investors. Accordingly,

**IT IS HEREBY ORDERED** that Defendant Ty Klotz's second amended motion for leave to receive living expenses in the amount of \$1080 per month (Docket # 183) is **CONDITIONALLY GRANTED** providing the following criteria are met:

1. All money Mr. Klotz currently has in his possession or subsequently receives shall be deposited into a bank account on which he is the only signatory.

2. If Mr. Klotz obtains employment, he shall provide a copy of any pay-stubs to the CFTC within seven (7) days of receipt.

3. If Mr. Klotz receives money other than from employment, within seven (7) days of receipt Mr. Klotz shall provide the CFTC a sworn statement from the donor or lender specifying the amount, specifying whether it is a gift or a loan, and further providing: "To the best of my knowledge and understanding, none of the money I have given or loaned Ty Klotz is derived from or traceable to any of the Aurifex entities or any of their investors."

4. Mr. Klotz shall provide the CFTC with a copy of his prior month's bank statement on or before the 15th day of each month in order to permit the CFTC to monitor his compliance with this order.

Date: October 23, 2007

/s/ Robert Holmes Bell

ROBERT HOLMES BELL

CHIEF UNITED STATES DISTRICT JUDGE